

Internal Revenue Service, Treasury

§ 31.3121(a)(7)-1

if at the time of such payment the annuity plan meets the requirements of section 401(a)(3), (4), (5), and (6).

(c) *Payments under or to certain bond purchase plans.* The term “wages” does not include any payment made after December 31, 1962—

(1) By an employer, on behalf of an employee or his beneficiary, into a bond purchase plan, or

(2) To, or on behalf of, an employee or his beneficiary under a bond purchase plan,

if at the time of such payment the plan is a qualified bond purchase plan described in section 405(a).

[T.D. 6876, 31 FR 2596, Feb. 10, 1966]

§ 31.3121(a)(5)-2 Payments under or to an annuity contract described in section 403(b).

(a) *Salary reduction agreement defined.* For purposes of section 3121(a)(5)(D), the term *salary reduction agreement* means a plan or arrangement (whether evidenced by a written instrument or otherwise) whereby payment will be made by an employer, on behalf of an employee or his or her beneficiary, under or to an annuity contract described in section 403(b)—

(1) If the employee elects to reduce his or her compensation pursuant to a cash or deferred election as defined at § 1.401(k)-1(a)(3) of this chapter;

(2) If the employee elects to reduce his or her compensation pursuant to a one-time irrevocable election made at or before the time of initial eligibility to participate in such plan or arrangement (or pursuant to a similar arrangement involving a one-time irrevocable election); or

(3) If the employee agrees as a condition of employment (whether such condition is set by statute, contract, or otherwise) to make a contribution that reduces his or her compensation.

(b) *Effective/applicability date.* This section is applicable on November 15, 2007.

[T.D. 9367, 72 FR 64942, Nov. 19, 2007]

§ 31.3121(a)(6)-1 Payment by an employer of employee tax under section 3101 or employee contributions under a State law.

The term “wages” does not include any payment by an employer (without

deduction from the remuneration of, or other reimbursement from, the employee) of either (a) the employee tax imposed by section 3101 or the corresponding section of prior law, or (b) any payment required from an employee under a State unemployment compensation law.

§ 31.3121(a)(7)-1 Payments for services not in the course of employer's trade or business or for domestic service.

(a) *Meaning of terms—*(1) *Services not in the course of employer's trade or business.* The term “services not in the course of the employer's trade or business” includes services that do not promote or advance the trade or business of the employer. Such term does not include services performed for a corporation. As used in this section, the term does not include service not in the course of the employer's trade or business performed on a farm operated for profit or domestic service in a private home of the employer. See paragraph (f) of § 31.3121(g)-1 for provisions relating to services not in the course of the employer's trade or business performed on a farm operated for profit.

(2) *Domestic service in a private home of the employer.* Services of a household nature performed by an employee in or about a private home of the person by whom he is employed constitute domestic service in a private home of the employer. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual in an apartment house, hotel, or other similar establishment may constitute a private home. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, it is not a private home. In general, services of a household nature in or about a private home include services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. The term “domestic service in a private home of the employer” does not include the services

enumerated above unless such services are performed in or about a private home of the employer. Services not of a household nature, such as services performed as a private secretary, tutor, or librarian, even though performed in the employer's home, are not included within the term "domestic service in a private home of the employer". As used in this section, the term does not include domestic service in a private home of the employer performed on a farm operated for profit or service not in the course of the employer's trade or business. See paragraph (f) § 31.3121(g)-1 for provisions relating to domestic service in a private home of the employer performed on a farm operated for profit.

(b) *Payments other than in cash.* The term "wages" does not include remuneration paid in any medium other than cash (1) for service not in the course of the employer's trade or business, or (2) for domestic service in a private home of the employer. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food, clothing, car tokens, transportation passes or tickets, or other goods or commodities, for service not in the course of the employer's trade or business or for domestic service in a private home of the employer does not constitute wages.

(c) *Cash payments.* (1) The term *wages* does not include cash remuneration paid by an employer in any calendar year to an employee for—

(i) Domestic service in a private home of the employer, unless the cash remuneration paid in such year by the employer to the employee for such service equals or exceeds the applicable dollar threshold (as defined in section 3121(x)) for such year; or

(ii) Service not in the course of the employer's trade or business, unless the cash remuneration paid in such year by the employer to the employee for such service equals or exceeds \$100.

(2) The tests relating to cash remuneration are based on the remuneration paid in a calendar year rather than on the remuneration earned during a calendar year. The following example illustrates this provision:

Example. On March 31, 2004, employer X pays employee A cash remuneration of \$100 for service not in the course of X's trade or business. Such remuneration constitutes wages subject to the taxes even though \$10 thereof represents payment for such service performed by A for X in December 2003.

(3) In determining whether wages have been paid either for domestic service in a private home of the employer or for service not in the course of the employer's trade or business, only cash remuneration for such service shall be taken into account. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, clothing, car tokens, transportation passes or tickets, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met. If an employee receives cash remuneration from an employer in a calendar year for both types of services the pertinent cash-remuneration test is to be applied separately to each type of service. If an employee receives cash remuneration from more than one employer in a calendar year for domestic service in a private home of the employer or for service not in the course of the employer's trade or business, the pertinent cash-remuneration test is to be applied separately to the remuneration received from each employer.

(d) *Cross references.* (1) For provisions relating to deduction of employee tax or amounts equivalent to the tax from cash payments for the services described in this section, see § 31.3102-1;

(2) For provisions relating to time of payment of wages for such services, see § 31.3121(a)-2;

(3) For provisions relating to computations to the nearest dollar of any payment of cash remuneration for domestic service in a private home of the employer, see § 31.3121(i)-1.

(e) *Effective dates.* (1) The provisions of this section apply to any cash payment for service not in the course of the employer's trade or business made on or after January 1, 1978 and for domestic service in a private home of the employer made on or after January 1, 1994.

(2) For rules applicable to any cash payment made prior to the dates set forth in paragraph (e)(1), see

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§ 31.3121(a)(7)-1 in effect at such time (see 26 CFR part 31 contained in the edition of 26 CFR Parts 30 to 39, revised as of April 1, 2006).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 9266, 71 FR 35155, June 19, 2006]

§ 31.3121(a)(8)-1 Payments for agricultural labor.

(a) *Scope of this section.* For purposes of the regulations in this section, the term “agricultural labor” means only such agricultural labor (see § 31.3121(g)-1) as constitutes employment or is deemed to constitute employment by reason of the rules relating to included and excluded services contained in section 3121(c) (see § 31.3121(c)-1) or the corresponding section of prior law.

(b) *Payments other than in cash.* The term “wages” does not include remuneration paid in any medium other than cash for agricultural labor. For meaning of the term “cash remuneration”, see paragraph (f) of the regulations in this section.

(c) *Cash payments.* (1) The term *wages* does not include cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless—

(i) The cash remuneration paid in such year by the employer to the employee for such labor is \$150 or more; or

(ii) The employer’s expenditures for agricultural labor in such year equal or exceed \$2,500, except that this paragraph (c)(1)(ii) shall not apply in determining whether remuneration paid to an employee constitutes wages for agricultural labor if such employee—

(A) Is employed as a hand-harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment;

(B) Commutes daily from his permanent residence to the farm on which he is so employed; and

(C) Has been employed in agriculture less than 13 weeks during the preceding calendar year.

(2) The application of the provisions of paragraph (c)(1) of this section may be illustrated by the following example:

Example. Employer X pays A \$140 in cash for agricultural labor in calendar year 2004. X makes no other payments to A during the year and makes no other payment for agricultural labor to any other employee. Employee A is not employed as a hand-harvest laborer. Neither the \$150-cash-remuneration test nor the \$2,500-employer’s-expenditures-for-agricultural-labor test is met. Accordingly, the remuneration paid by X to A is not subject to the taxes. If in 2004 X had paid A \$140 in cash for agricultural labor and had made expenditures of \$2,360 or more to other employees for agricultural labor, the \$140 paid by X to A would have been subject to tax because the \$2,500-employer’s-expenditures-for-agricultural-labor test would have been met. Or, if X had paid A \$150 in cash in 2004 and made no other payments to any other employee for agricultural labor, the \$150 paid by X to A would have been subject to tax because the \$150-cash-remuneration test would have been met.

(d) *Application of cash-remuneration test.* (1) If an employee receives cash remuneration from an employer both for services which constitute agricultural labor and for services which do not constitute agricultural labor, only the amount of such remuneration which is attributable to agricultural labor shall be included in determining whether cash remuneration of \$150 or more has been paid in the calendar year by the employer to the employee for agricultural labor. The following example illustrates this paragraph (d)(1):

Example. Employer X operates a store and also is engaged in farming operations. Employee A, who regularly performs services for X in connection with the operation of the store, works on X’s farm when additional help is required for the farm activities. In the calendar year 2004, X pays A \$140 in cash for services performed in agricultural labor, and \$4,000 for services performed in connection with the operation of the store. X has no additional expenditures for agricultural labor in 2004. Since the cash remuneration paid by X to A in the calendar year 2004 for agricultural labor is less than \$150, the \$150-cash-remuneration test is not met. The \$140 paid by X to A in 2004 for agricultural labor does not constitute wages and is not subject to the taxes.

(2) The test relating to cash remuneration of \$150 or more is based on the cash remuneration paid in a calendar year rather than on the remuneration earned during a calendar year. It is immaterial if such cash remuneration is paid in a calendar year other than the